

DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF PERSONNEL APPEALS



STAN STEPHENS, CONTROLLER

LABOR 1729

STATE OF MONTANA

HEID 44-5022

HELENA, MONTANA 59621

STATE OF MONTANA DEPARTMENT OF LABOR AND INDUSTRY BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE NO. 3-90

I.A.M. AND A.W. DISTRICT LODGE)
NO. 85, LOCAL LODGE NO. 88,

Complainant,

VS.

ANACONDA-BEER LODGE COUNTY,

Defendant.

FINDINGS OF FACT;
CONCLUSIONS OF LAW;
RECOMMENDED ORDER

* * * * *

I. INTRODUCTION

On February 23, 1990, the Complainant filed an Unfair Labor Practice Charge with this Board alleging that the Defendant violated Sections 39-31-401(1),(2) and (5), and Section 39-31-103(1) and (5). The Defendant denied the charges in correspondence dated March 3, 1990 and moved to dismiss the Charge.

The Board conducted an investigation in this matter. An Investigation Report and Determination was issued on April 4, 1990 which found probable merit for the charge and concluded that a formal hearing in the matter was appropriate.

A hearing was conducted under authority of Section 39-31-406, MCA pursuant to ARM 24.26.682, and in accordance with Administrative Procedure Act (Title 2, Chapter 4, MCA). The purpose of the hearing was to determine if the Defendant had violated the above cited laws. The hearing examiner was Joseph V. Maronick.

Don K. Klepper and Gene Vockovich represented the Defendant. The Complainant did not appear at the time scheduled for the hearing.

II. FINDINGS OF FACT

The complaint filed February 23, 1990 indicates that the employer committed an Unfair Labor Practice Charge by:
...unilaterally changing holidays.

In answer to this charge, the Defendant indicated that holidays were provided in conformance with the current Collective Bargaining Contract, Section 3.

The Unfair Labor Practice Charge also indicated that "On 10/26/89, on or about 8:30 a.m., the employer, Bill Fields, is in violation of 39-31-401, Sections 1 and 5."

In response to this portion of the charge, the Defendant indicated that insufficient information was offered to support any conclusions relating to the specific facts, if any, which are involved in this allegation. Because of the lack of specific information, the Defendant decline to respond other than generally denying any violation of Section 39-31-401(1)(5).

The third allegation in the charge indicated that Bill Fields is a Supervisor as defined by MCA 39-31-103 and is doing bargaining units work Section 1 and 5.

In response to this allegation, the Defendant indicated that in accordance with "Schedule A" of the current union agreement, Mr. Bill Fields is a working foreman and allowed under the terms of the contract to perform some bargaining unit work. Mr. Fields, according to the Defendant, does not regularly perform unit work but regularly offers advice and direction to other union members at times by showing them how to perform some of the work duties.

The final allegation of the charge indicates that the employer by letter dated February 8, 1990 from Bill Fields to Joe Struznik is harassing, intimidating and discriminating against Joe Struznik because of his union activity in violation of Section 39-31-401(1).

In response to this allegation, the Defendant pointed out that the February 8, 1990 letter which was sent to Mr. Struznik was a remediation letter directed to Mr. Struznik relating to proper performance of work duties. In conformance with the contract, Section 8 and 9, management is not precluded from enumeration of specific work performance and/or identifying insufficiencies in a union member's work performance.

Mr. Struznik filed a grievance relating to the February 8, 1990 letter and did not continue to process that grievance through the entire grievance procedure as allowed under the contract terms. The defendant denied any violation of Section

39-31-401(1) in the submission of the remediation letter to Mr. Struznik.

III. DISCUSSION

The record presented is insufficient to support a finding that the Defendant committed an Unfair Labor Practice Charge as identified in the charge submitted by the complaining party on February 23, 1990. The record shows that the Defendant has acted within the confines of the employment contract and any actions taken were within contract terms.

IV. CONCLUSIONS OF LAW

The Defendant, Anaconda-Deer Lodge County, has not violated Sections 39-31-401(1)(2)(5) or Section 39-31-103(1)(5) as alleged in the complaint filed by I.A.M. and A.W. District Lodge NO. 85 Local Lodge No. 88.

V. RECOMMENDED ORDER

IT IS ORDERED that the Defendant's Motion to Dismiss is granted. Unfair Labor Practice Charge No. 3-90 is HEREBY dismissed.

Dated this 20 day of July, 1990.

DEPARTMENT OF LABOR & INDUSTRY
LEGAL SERVICES DIVISION


Joseph V. Maronick
Hearing Officer